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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUARDO GONZALEZ,

Defendant and Appellant.

B287547

(Los Angeles County
Super. Ct. No. VA142128)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael A. Cowell, Judge. Affirmed as modified.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Eduardo Gonzalez of four felonies: one count of shooting at an occupied motor vehicle (Pen. Code, § 246),¹ two counts of assault with a semiautomatic firearm (§ 245, subd. (b)), and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)). The jury also found appellant personally fired a handgun in the commission of the two assault counts (§ 12022.5, subd. (a)).² Gang allegations (§ 186.22, subd. (b)(1)(C)) were dismissed before trial on the People's motion.

Appellant's sentencing hearing was conducted on January 3, 2018. Section 12022.5, subdivision (c) had just become effective, and defense counsel urged the trial court to exercise its newly authorized discretion and strike the enhancements for appellant's use of a gun. The trial court disagreed and indicated it would impose the upper, 10-year term on one count "based on the fact not only [appellant] used the firearm, but he fired it. He was on probation already for a weapons offense." The trial court imposed a 16-year sentence. The principal term was imposed on count 2, assault with a semiautomatic firearm. Appellant was sentenced to the midterm of six years, with a consecutive 10-year high term for the enhancement. On count 3, the conviction for assault with a semiautomatic firearm against the second victim, defendant was sentenced to the midterm of six years, to be served

¹ All statutory citations are to the Penal Code.

² The victims were off-duty police officers in plain clothes, driving an unmarked police vehicle. Appellant was standing in the front yard of a friend's house and fired at the officers' vehicle after they drove by the residence, made a U-turn, and then drove by a second time. The bullet missed the officers' car and struck a nearby parked vehicle.

concurrently with the sentence on count 2. The trial court struck the firearm enhancement as to count 3. A five-year midterm sentence was imposed for count 1 (shooting at an occupied vehicle), but stayed pursuant to section 654. A two-year midterm, concurrent sentence was imposed on count 4, possession of a firearm by a felon.

Before imposing the sentence, the trial court and counsel discussed the 10-year enhancement in the context of the jury's finding that appellant personally fired a semiautomatic weapon. When announcing the sentence, however, the trial court stated the enhancement was imposed pursuant to section 186.22, subdivision (b)(1)(C), the dismissed gang allegation. The court's minutes and the abstract of judgment were consistent with the trial court's pronouncement and reflected the enhancement was based on a gang finding.

Gonzalez raises this error as his solitary issue on appeal. He contends the sentence was unauthorized and must be corrected to reflect the 10-year enhancement was imposed based on appellant's personal use of a firearm (§ 12022.5). The Attorney General concedes the point. Accordingly, we modify the judgment to indicate the 10-year enhancement was imposed on count 2 pursuant to section 12022.5, subdivision (a), and order the superior court clerk to similarly amend the abstract of judgment.

DISPOSITION

We direct the clerk of the superior court to amend the abstract of judgment to reflect the 10-year enhancement was imposed on count 2 pursuant section 12022.5, subdivision (a), instead of section 186.22, subdivision (b)(1)(C), and to forward a copy of the amended abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

DUNNING, J.*

We concur:

WILLHITE, Acting P. J.

COLLINS, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.